IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 16TH OCTOBER 2006 / 24TH ASWINA 1928

RP.No. 826 of 2006(F)

AGAINST THE JUDGEMENT/ORDER IN WPC.14543/2006 Dated 18/07/2006

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PETITIONER

V.M.GOPAKUMAR, S/O.MADHAVAN ELAYATH,
VEMBALLOOR ILLOM, THIRUNAVAYA,
MALAPPURAM DISTRICT.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.P.K.KHALEEMUDHEEN
SMT.A.K.MAYAKRISHNAN

RESPONDENTS:

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1. THE STATE OF KERALA,
REPS. BY THE SECRETARY, GOVERNMENT OF KERALA,
REVENUE (B) DEPARTMENT, THIRUVANANTHAPURAM.

2. THE ZAMORIAN RAJA OF CALICUT,
MANAGING TRUSTEE, THIRUNAVAYA NAVA MUKUNDA TEMPLE,
CHALAPPURAM, CALICUT-2.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 16/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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R.P.No.826 of 2006 in
W.P.(C)No.14543 of 2006

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Dated this the 16th day of October, 2006.

ORDER

This is a petition filed by the writ petitioner seeking review of the judgment dated 18-7-2006 in W.P.(C)No.14543 of 2006, dismissing the writ petition.

2. Before me, the learned counsel appearing for the petitioner urged that while deciding the writ petition, this Court had not gone into the question whether the acquisition of land for the purpose of a private temple can be a public purpose and that it is a crucial issue that would clinch the fate of the case. It is further urged that the view in the judgment sought to be reviewed that car parking facility or development of the area around the temple will fall within the expression "public purpose" is too wide a proposition, that it relates to a private temple.

3. The petitioner had earlier filed W.P.(C) No.23652 of 2003 challenging the acquisition in

question. That writ petition was dismissed on 30-7-2004 as per judgment marked Ext.R2(A) in the writ proceedings from which this review petition arises. A perusal of Paragraph No.14 of that judgment would show that the contentions of the petitioner were two fold; firstly, that the proposal is mala fide and secondly, the invocation of urgency provisions under the Land Acquisition Act, hereinafter referred to the "Act", for short, is unwarranted and will prejudice the petitioner, who will be deprived of the opportunity of an enquiry under Section 5-A of the Act. It was noticed by the learned Judge in Ext.R2(A) judgment that it was not in dispute that the Navamukunda Temple at Thirunavaya on the banks of a river having reputation is an ideal place where obsequies can be performed and that it was not disputed that a good number of devotees visiting the temple come far away places in private vehicles and that the need of the Devaswom authorities to provide facilities in the temple for the devotees, including facilities for parking of the vehicles will be "public purpose" within the ambit of the Act. I notice that portion of the said judgment, with

emphasis, in the wake of the present contention that the Act cannot be pressed into service for the purpose of a "private temple". An appeal was filed against the aforesaid judgment as W.A.No.2103 of 2004, which was sought to be withdrawn with a request for an opportunity to move the Government. That appeal was dismissed as withdrawn, holding that leave cannot be granted to move the Government. Thereafter W.P.(C) No.19258 of 2005 was moved by the Zamorian Raja of Calicut, the Managing Trustee of the aforesaid temple for directions, since, there was stalemate in the land acquisition proceedings. That writ petition was disposed of 18-11-2005. That judgment was confirmed by the Division Bench by judgment dated 24-3-2006 in W.A.No.492 of 2006. In that judgment of the Division Bench, which is Ext.R2(D) in the writ proceedings from which this application for review arises, it was noted that the facts revealed that Thirunavaya temple is one of the temples under the trusteeship of the Raja and it comes under the purview of the Hindu Religious and Charitable Endowments Act and that the land acquisition proceedings were initiated, in as much as the existing

area of that temple had outlived the present requirements.

4. It was after the aforesaid proceedings and judgments that the writ petition from which this review petition arises, was filed. Dismissing the said writ petition, it was held that the petitioner, having challenged the acquisition in the writ proceedings as aforenoted, whatever would be his contentions against the acquisition, all such contentions are concluded on grounds of res judicata, including that of constructive res judicata, a principle founded on public policy.

5. That position notwithstanding, after considering the arguments on behalf of the writ petitioner, it was held in the judgment sought to be reviewed, that the expression "public purpose" as defined in Section 3(f) of the Act is an inclusive definition and the different categories enumerated therein are not exhaustive, and further that, whether a particular purpose is a public purpose would depend upon the local requirement, need, change in times, the

context and other matters that would go into the decision making process.

6. Still further, it was held that viewed in any angle, the need to provide more space for Thirunavaya Navamukunda temple and also parking place in relation to the said temple cannot be treated as away from the scope of the definition "public purpose" as defined in the Act.

7. Having regard to what is aforesaid, the question whether the purpose of acquisition is for a private temple does not arise for decision even as an abstract academic issue, when petitioner had not raised in the first among the writ petitions (W.P.(C)No.23652 of 2003), any such issue regarding the public purpose involved in the acquisition in question. That apart, it was specifically found in the judgment sought to be reviewed that all contentions relating to the acquisition were concluded by constructive res judicata and none of them could be urged.

8. The plea in the review petition that the finding in the judgment sought to be reviewed that the car parking facility around the temple would fall within the expression "public purpose" is too wide a proposition, also does not merit any further consideration, because, the definition of "public purpose", had been specifically dealt with in the judgment sought to be reviewed and a specific finding was rendered.

9. The judgment sought to be reviewed is not vitiated by any error apparent on the face of record and no ground for review is made out. Review Petition is without any merit. It is hence dismissed in limine.

Thottathil B.Radhakrishnan,
Judge.

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